

2. The defendants are awarded such costs, if any, as they may have had which are taxable under the first sentence of Section 265, Trust Territory Code, provided they file a sworn, itemized statement within thirty (30) days after entry of this judgment.

KINTOKI JOSEPH, Plaintiff

v.

ERNIST LUDWIG, Defendant

Civil Action No. 405

Trial Division of the High Court

Truk District

April 29, 1969

See, also, 4 T.T.R. 357

Motion for dismissal on grounds of res judicata. The Trial Division of the High Court, H. W. Burnett, Associate Justice held that where interests were necessarily represented in a prior action court was without power to question the propriety of that result in another action.

Order for dismissal.

1. Judgments-Res Judicata

The doctrine of res judicata, literally translated as "the matter has been adjudged", means quite simply that the court will not permit parties or those in privity with them to relitigate issues which have already been determined by a court of competent jurisdiction.

2. Judgments-Res Judicata

When speaking of parties and those in privity with them as being bound under the doctrine of res judicata, one means parties claiming under the same title; privity involves one so identified in interest with another that he represents the same legal right.

3. Judgments-Res Judicata

Where interests claimed were necessarily represented in a prior action the court was without power to question the propriety of the result there obtained.

BURNETT, *Associate Justice*

ORDER

This action involves a determination of title to land known as On Apachon, located in Maunitiw Village, Udot Island, Truk District. It was consolidated for trial with Truk District Civil Action No. 404, *Wisim v. Ernest Ludwig*, and Truk District Civil Action No. 372, *Aten v. Ernest Ludwig*, 4 T.T.R. 357. Upon conclusion of plaintiff's case, the defendant moved for dismissal of this action on the grounds of res judicata, in that the issue as between Kintoki and Ludwig had been determined in the case of *Ernest v. Akung*, 2 T.T.R. 428, which was affirmed in 3 T.T.R.594.

The judgment in Civil Action No. 127, 2 T.T.R. 428, reads in part as follows:-

"1. As between the parties and all persons claiming under them, the part of the land known as POW or POU, located in Maunitiw Village, Udot Island, Truk District, bounded as follows:-

On the north by the Village of Benia,

On the east by the land Neimueken and the main hill of Witonap,

On the south by the land Wnifou, and

On the west by the mangrove swamps and lagoon,

is owned by Ludwig who lives in Maunitiw Village, for whom the plaintiff makes claim in this action, and neither the defendant Akung nor the defendant Kintoki (both of whom live on Udot Island) has any rights of ownership in this part of POW.

"The defendants Akung and Kintoki are permanently enjoined from and forbidden to interfere with the use of said land by Ludwig and those claiming under him. . . ."

The plaintiff in this action was a party defendant in Truk District Civil Action No. 127, 2 T.T.R. 428, and he concedes that the land On Apachon is within the area described in that judgment as being owned by Ludwig. He contends, however, that title to On Apachon was not determined in that action, since it was then owned by a

sister of his father named Naserupu who was not a party, and that he did not obtain rights of ownership until just before her death in 1963.

[1] The doctrine of *res judicata*, literally translated as "the matter has been adjudged" means quite simply that the court will not permit parties or those in privity with them to relitigate issues which have already been determined by a court of competent jurisdiction.

"The doctrine of *res judicata* inheres in the legal systems of all civilized nations as an obvious rule of expediency, justice, and public tranquility. Public policy and the interests of litigants alike require that there be an end to litigation which, without the doctrine of *res judicata* would be endless. The doctrine of *res judicata* rests upon the ground that the party to be affected, or some other with whom he is in privity, has litigated, or had an opportunity to litigate, the same matter in a former action in a court of competent jurisdiction, and should not be permitted to litigate it again to the harassment and vexation of his opponent." *Tuchurer v. Rechuld*, 2 T.T.R. 576.

[2] When we speak of parties and those in privity with them as being bound under the doctrine, we mean parties claiming under the same title; privity involves one so identified in interest with another that he represents the same legal right.

When we examine the record made by the plaintiff on trial, the conclusion is inescapable that, at the time of trial of Civil Action No. 127,2 T.T.R. 428, Kintoki had definite rights in the land On Apachon, had full powers of representation of the interests of Naserupu, and an obligation to represent those interests. Certainly he was on notice that On Apachon was among the lands to which plaintiff Ludwig laid claim.

[3] Having found that the interests of Naserupu were necessarily represented by this plaintiff in the prior action, I conclude that the court is without power to question the

propriety of the result there obtained. It follows that the motion of the defendant must be granted, and Truk District Civil Action No. 405 is hereby ordered dismissed.

ATEN, Plaintiff

v.

ERNIST LUDWIG, Defendant

Civil Action No. 372

WISIM, Plaintiff

v.

ERNIST LUDWIG, Defendant

Civil Action No. 404

Trial Division of the High Court

Truk District

April 30, 1969

See, also, 4 T.T.R. 354

Action to determine ownership of land on Udot Island, Truk District. The Trial Division of the High Court, H. W. Burnett, Associate Justice, held that defendant's predecessor had only leased land in question and as a result could not have sold full title to it to defendant.

1. Judgments-Res Judicata

The right to intervene cannot subject a person to being bound by the result of an action under the doctrine of res judicata.

2. Judgments-Collateral Attack

Where a judgment, on its face, purports to apply to land neither owned nor claimed by those to whom it is directed, the court is free to read it in connection with the entire record for the purpose of determining its proper application, and to do so is not to attack the judgment, but to define it.

3. Truk Land Law-Generally

The official position of the Japanese Government prohibited the purchase of land by non-natives.